IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16173 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL DAHYABHAI BHIMANI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 16173 of 2003

MR SURESH M SHAH for Petitioner No. 1

Mr. KP Raval, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/06/2004

ORAL JUDGEMENT

Rule. Shri KP Raval, learned AGP waives service of Rule on behalf of the respondents. With the consent of the parties and considering the facts and circumstances, the matter is taken up for final hearing today.

2. The petitioner was granted 2000 sq.mtrs of land bearing Survey No. 253 of Mendarda village for development of his industry by order dated 2.6.1973 on the terms and conditions stipulated in the said order. As the petitioner wanted to change the user of the land he moved an application before the competent authority and the application of the petitioner was granted by order dated 24.9.2000. The petitioner was permitted to change the use with regard to the land in question on payment of total amount of premium of Rs. 8,36,200/= at the rate of Rs.500/= per sq.mtr. As the petitioner was aggrieved by the said order with regard to fixation of the amount of premium at the rate of Rs. 500/= per sq.mtr., the petitioner challenged the order dated 24.9.2000 before the revisional authority. However, subsequently the petitioner withdrew the same and made payment of Rs. 8,36,200/= pursuant to the order passed by the competent authority by which the petitioner was allowed to change the user of the land. It seems that thereafter the Mamlatdar, Mendarda on the basis of the valuation fixed by The District Valuation Committee directed the petitioner to pay an amount of Rs.15,05,160/= being the difference amount of premium considering the premium at the rate of Rs. 1400/= per sq.mtre. Being aggrieved and dissatisfied with the said communication/order dated 30th November 2002 passed by the Mamlatdar, Mendarda directing the petitioner to pay the amount of premium at the rate of Rs. 1,400/= per sq.mtre and thereby deducting an amount of RS. 8,36,200/= which was paid by the petitioner pursuant to the order passed by the Collector, Junagadh dated 12th October 2001, the petitioner preferred revision application before the learned Special Secretary (Appeals), Revenue Department, State of Gujarat. The learned Special Secretary, Revenue Department, State of Gujarat, Ahmedabad, by his judgment and order dated 30th August 2003 dismissed the said application confirming the order passed by the Mamlatdar, Mendarda dated 30th November 2002. Being aggrieved and dissatisfied with the order passed by the State Government, i.e. learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, passed by Revision Application No. 18 of 2003 in dismissing the same and confirming the order passed by the Mamlatdar, Mendarda, dated 30th November 2002 the present Special Civil Application is filed under Article 227 of the Constitution of India.

3. Shri S.M. Shah, learned advocate appearing on behalf of the petitioner has submitted that before passing the order/communication passed by the Mamlatdar, Mendarda, dated 30th November 2002 no opportunity of

being heard has been given to the petitioner, nor any notice was served upon the petitioner to show cause why the amount of premium should not be enhanced and the earlier order by which the amount of premium was fixed at Rs. 500/= should not be modified. Shri Shah has further submitted that though it was specifically argued before the revisional authority with regard to violation of principles of natural justice, the learned Special Secretary has not properly dealt with the same and has not considered the same and has dismissed the revision application confirming the order passed by the Mamlatdar, Mendarda dated 30th November 2002. He has also further submitted that even the petitioner is also not given the report/valuation fixed by the District Valuation Committee, relying upon which the Mamlatdar has passed the order to enhance the amount of premium at Rs. 1,400/= per sq.metre and therefore he has requested to quash and set aside the order passed by the Mamlatdar, Mendarda dated 30th November 2002 and also the judgment and order passed by the learned Special Secretary (Appeals), Revenue Department, dated 30th August 2003 in Revision Application No. 18 of 2003. Shri K.P. Raval, learned AGP is not in a position to support the order passed either by the Mamlatdar, Mendarda dated 30th November 2002 or the order passed by the learned Special Secretary (Appeals), State of Gujarat, dated 30th August 2003 in Revision Application No. 18 of 2003.

4. Heard the learned advocate appearing for the parties. Initially, the Collector, Junagadh passed an order on 12th October 2001 allowing the application of the petitioner for change of user and fixing the amount of premium at the rate of Rs. 500/= per sq.mtre. That amount was paid by the petitioner which came to be Rs. 8,36,200/=. Thereafter without giving any opportunity of being heard to the petitioner straightway the Mamlatdar, Mendarda has passed an order dated 30th November 2002 on the basis of some report/valuation by the District Valuation Committee. It is an admitted position that before passing the impugned order dated 30th November 2002 neither the report/valuation of the District Valuation Committee which is relied upon by the Mamlatdar, Mendarda is given to the petitioner nor any show cause notice was given to the petitioner to show cause why the amount of premium should not be enhanced. Under the circumstances, the impugned order dated 30th November 2002 passed by the Mamlatdar, Mendarda in fixing the amount of premium at the rate of Rs. 1400/= and modifying the earlier order passed by the Collector, Junagadh, by which the amount of premium was fixed at Rs. 500/= is against the principles of natural justice. When

the order dated 30th November 2002 was passed without giving opportunity of being heard to the petitioner and it was having some civil consequences and instead of Rs. 8,36,200/= the petitioner is now required to pay additional amount of Rs.15,05,160/=, the order passed by the revisional authority confirming the order passed by the Mamlatdar, Mendarda dated 30th November 2002 will also be not allowed to stand and the same is also required to be quashed and set aside. Considering the aforesaid facts and circumstances of the case, as the first order passed by the Mamlatdar, Mendarda is passed against the principles of natural justice, the same is required to be quashed and set aside and the matter is required to be remanded to the competent authority for deciding the issue afresh in accordance with law and after giving opportunity of being heard to the petitioner.

5. For the reasons stated above, the judgment and order passed by the learned Special Secretary (Appeals), State of Gujarat, Ahmedabad, dated 30th August 2003 in Revision Application No. 18 of 2003 in dismissing the said revision application and confirming the order passed by the Mamlatdar, Mendarda dated 30.11.2002 and also the order passed by the Mamlatdar, Mendarda, dated 30th November 2002 enhancing the amount of premium at the rate of Rs. 1,400/= are hereby quashed and set aside. It will be open for the Mamlatdar, Mendarda and/or the Collector to pass appropriate order in accordance with law with regard to enhancement of the amount of premium after affording opportunity of being heard to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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